

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NATERA, INC.,

Plaintiff/Counterclaim  
Defendant; and

DNA DIAGNOSTICS CENTER, INC.

Counterclaim Defendant.

v.

SEQUENOM, INC.

Defendant/Counterclaim  
Plaintiff; and

ISIS INNOVATION LIMITED

Nominal Counterclaim-  
Defendant.

Case No. 3:12-cv-0132-SI

**STIPULATED PROTECTIVE ORDER**

1 Plaintiff and Counterclaim-defendant Natera, Inc. and Counterclaim-defendant DNA  
 2 Diagnostics Center, Inc., Defendant and Counter-plaintiff, Sequenom, Inc., and Nominal  
 3 Counterdefendant Isis Innovation Limited (the "Parties") assert that they may possess confidential  
 4 information in the form of trade secrets or other confidential business, personal, and/or technical  
 5 information related to the subject matter of this Litigation, as well as information that constitutes  
 6 "protected health information" under the Health Insurance Portability and Accountability Act of  
 7 1996 ("HIPAA"). The Parties recognize that it may be necessary to disclose certain of the  
 8 asserted confidential information during the course of this Litigation. As a result, the Parties  
 9 desire limiting disclosure and preventing use of such information for purposes other than the  
 10 prosecution and defense of this Litigation. In addition, the Parties contemplate that non-parties  
 11 may produce confidential information. Pursuant to Rule 26(c) of the Federal Rules of Civil  
 12 Procedure, the Parties, by and through their respective undersigned counsel, hereby stipulate and  
 13 agree to the request for, and entry of, the following Stipulated Protective Order (hereinafter,  
 14 "Order").

15 This Order shall apply to all information, documents, and things within the scope of  
 16 discovery in this Litigation that are in the possession or custody of, or are owned or controlled by  
 17 the Parties or third parties, including but not limited to documents and things responsive to  
 18 requests for production of documents and things under Federal Rule of Civil Procedure 34  
 19 (including business records produced pursuant to Federal Rule of Civil Procedure 33(d)); answers  
 20 to interrogatories under Federal Rule of Civil Procedure 33; responses to requests for admission  
 21 under Federal Rule of Civil Procedure 36; testimony provided at deposition pursuant to Federal  
 22 Rule of Civil Procedure 30 or 31; testimony provided at any hearing in this Litigation; documents  
 23 and things responsive to, and testimony provided pursuant to any subpoena issued in this  
 24 Litigation under Federal Rule of Civil Procedure 45; and documents, things, testimony, or other  
 25 information obtained through discovery from foreign third parties, including but not limited to  
 26 such discovery taken under the Hague Convention on the Taking of Evidence Abroad in Civil or  
 27 Commercial Matters. All such materials shall be used only in connection with the preparation,  
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trial, and appeal of this Litigation. This limitation shall not apply to the Party that created or produced such materials, or otherwise had possession, custody, ownership, or control of the materials outside of this lawsuit.

# **1. DEFINITIONS**

(a) *Designated Material*: The term “Designated Material” shall mean and refer to all information and material subject to this Order that constitutes or contains a trade secret or other confidential research, development, or commercial information, including but not limited to non-public technical, business, or financial information, marketing plans, customer lists, vendor lists and proposals, pricing and cost data, business plans, user information, and all information, documents, and things referring or relating to the foregoing, including copies, abstracts, and summaries of the same. “Designated Material” includes “CONFIDENTIAL INFORMATION” and “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION” as those terms are defined below. The scope of this Order shall be understood to encompass not only Designated Material which is expressly designated as “CONFIDENTIAL INFORMATION” or “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION,” but also any information copied therefrom, and all copies, excerpts, and summaries thereof, as well as testimony and oral conversations which reveal that information.

(b) *Discovery Material*: The term “Discovery Material” shall mean any document (as defined below), material, item, testimony, information, or thing filed with or presented to the Court or produced, disclosed, served, or generated in connection with the discovery process or Federal Rule 26(a) disclosures in this Litigation, including without limitation, for example, initial disclosures; exhibits; answers to interrogatories; responses to requests for admissions; responses to requests for production; expert reports; subpoenas; declarations; affidavits; and deposition testimony or transcripts; and all copies, extracts, summaries, compilations, presentation by parties or counsel to or in court, designations, and portions thereof.

(c) *Confidential Information*: The term “CONFIDENTIAL INFORMATION” means information or material that a designating party believes, in good faith, embodies, contains or

1 reflects confidential information or material that is used by the designating Party in, or pertaining  
 2 to, its business, which information or material is not generally known and which the designating  
 3 Party would normally not reveal to third parties, including but not limited to confidential research,  
 4 development, commercial, proprietary, technical, business, financial, sensitive or private  
 5 information or material.

6 (d) *Outside Attorneys' Eyes Only Information:* The term "OUTSIDE ATTORNEYS'  
 7 EYES ONLY INFORMATION" means "CONFIDENTIAL INFORMATION" (i) of a  
 8 commercially sensitive nature such as a trade secret that a designating party determines, in good  
 9 faith, is likely to cause significant competitive harm to its existing or prospective commercial  
 10 relationships if disclosed to third parties or select employees or agents of the Receiving Party,  
 11 including, but not limited to, unpublished pending domestic or foreign patent applications; non-  
 12 public financial, marketing, strategic, organizational, operational or competitive information; and  
 13 highly sensitive technical information relating to the design, development, research, testing and  
 14 production of products, or (ii) that a designating party believes, in good faith, embodies, contains,  
 15 or reflects "protected health information" under HIPAA; for purposes of this Order, "protected  
 16 health information" comprises the identifiers set forth in 45 C.F.R. § 164.514(b)(2)(i).

17 (e) *Document:* The term "Document" shall mean every means of recording any form  
 18 of communication or representation upon any tangible thing, including letters, words, pictures,  
 19 sounds, or symbols, or combinations thereof, whether recorded by handwriting, printing,  
 20 photostatic, or photographic means, magnetic impulse, tape, computer disk, CD-ROM or any other  
 21 form of data storage, data compilation, or mechanical or electronic recording, and all other  
 22 tangible things which come within the meaning of "document" or "tangible thing" contained in  
 23 Rule 34 of the Federal Rules of Civil Procedure.

24 (f) *Outside Counsel:* The term "outside counsel" means attorneys who are not  
 25 employees of a Party to this Litigation but are retained to represent or advise a Party to this  
 26 Litigation and have appeared in this Litigation on behalf of that Party or are affiliated with a law  
 27 firm which has appeared on behalf of that Party.  
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(g) *Party*: The term “Party” means any party to this Litigation including all of its officers, directors, and employees, and (other than its legal counsel) consultants.

(h) *Producing Party*: The term “Producing Party” shall mean any Party to this Litigation or any third party, including its counsel, retained experts, directors, officers, employees, or agents, who produces any Discovery Material during discovery in connection with this Litigation.

(i) *Receiving Party*: The term “Receiving Party” shall mean any Party to this Litigation who receives any Discovery Material from a Producing Party.

(j) *Litigation*: The term “Litigation” shall mean Case No. 3:12-cv-0132-SI in the United States District Court For The Northern District of California, including any appeals therefrom.

## **2. PROCEDURE FOR MARKING PRODUCED DOCUMENTS**

Copies of documents produced in this Litigation, whether pursuant to a formal discovery request or otherwise, shall bear a unique identifying number, except such unique identifying number is not required when documents are produced only for inspection.

## **3. CATEGORIES OF DESIGNATED MATERIAL**

(a) *Types*. Any Producing Party may mark Designated Material as follows: (i) if containing “CONFIDENTIAL INFORMATION,” by marking the Designated Material “CONFIDENTIAL”; or (ii) if containing “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION,” by marking the Designated Material “OUTSIDE ATTORNEYS’ EYES ONLY” if the Producing Party reasonably believes in good faith that the Designated Material meets the requirements of Paragraphs 1(c) and 1(d) above.

(b) *Additional Categories*. The Parties may agree to add additional categories of Designated Material (in addition to CONFIDENTIAL INFORMATION and OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION) from time to time as may be necessary or appropriate. If the Parties cannot resolve the issue of whether this Order should be amended to include the proposed new category of Designated Material, the dispute may be submitted to the

1 Court by motion or otherwise. Disclosure of the Discovery Material, however, shall still be  
 2 made, but with the highest level of confidentiality available under this Order, pending resolution  
 3 of the objection by the Parties or the Court, as the case may be.

4 **4. PROCEDURE FOR MARKING DESIGNATED MATERIAL**

5 Marking Designated Material as CONFIDENTIAL or OUTSIDE ATTORNEYS' EYES  
 6 ONLY shall be made by the Producing Party in the following manner:

7 (a) In the case of documents or any other tangible thing produced, designation shall be  
 8 made by placing the legend "CONFIDENTIAL" or "OUTSIDE ATTORNEYS' EYES ONLY" on  
 9 each page of the document or on the cover or in a prominent place on any other tangible thing  
 10 prior to production of the document or tangible thing;

11 (b) In the case of electronically stored information ("ESI"), (i) digital image files, such  
 12 as TIFFs, will be marked by the Producing Party with the appropriate designation on each  
 13 viewable page or image, and (ii) native documents and databases will be marked by the Producing  
 14 Party with the appropriate designation using a naming convention that conveys its confidentiality  
 15 status, or some other appropriate means to communicate the confidential nature of the ESI that is  
 16 agreed upon by the Parties.

17 (c) In producing original files and records for inspection, no marking need be made by  
 18 the Producing Party in advance of the inspection. For the purposes of the inspection, all  
 19 documents produced shall be considered as marked "OUTSIDE ATTORNEYS' EYES ONLY."  
 20 Thereafter, upon selection of specified documents for copying by the Receiving Party, the  
 21 Producing Party shall mark as "CONFIDENTIAL" or "OUTSIDE ATTORNEYS' EYES ONLY"  
 22 the copies of such documents as may contain confidential information at the time the copies are  
 23 produced to the Receiving Party;

24 (d) Any individual response to written interrogatories or requests for admissions or any  
 25 expert report that contains or constitutes Designated Material shall be labeled or marked by the  
 26 Producing Party as "CONFIDENTIAL" or "OUTSIDE ATTORNEYS' EYES ONLY" as the case  
 27 may be, at the time it is provided or disclosed to the Receiving Party, by indicating either at the  
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1 outset of the document embodying the response or in the body of each individual response, the  
2 designation applicable to each response. With respect to responses to written interrogatories or  
3 requests for admissions already served in this Litigation, the outside counsel for the respective  
4 Parties shall exchange letters within ten (10) business days following entry of this Order  
5 identifying the designation, if any, applicable to each. Any document or thing created (e.g., any  
6 abstract, summary, memorandum, or exhibit) containing Designated Material subject to this Order,  
7 shall likewise be marked or labeled as “CONFIDENTIAL” or “OUTSIDE ATTORNEYS’ EYES  
8 ONLY” as the case may be; and

9 (e) In the case of deposition testimony, transcripts or portions thereof, designation shall  
10 be made by any Party either (i) orally on the record during the deposition, in which case the  
11 portion of the transcript of the designated testimony shall be bound in a separate volume and  
12 marked “CONFIDENTIAL INFORMATION” or “OUTSIDE ATTORNEYS’ EYES ONLY  
13 INFORMATION” by the reporter, as the Party may direct, or (ii) by captioned, written notice to  
14 the reporter and all counsel of record, given within ten (10) business days after receipt of the  
15 official transcript. All counsel receiving such notice shall be responsible for marking the copies of  
16 the designated transcript or portion thereof in their possession or control as directed by the Party  
17 or deponent. Pending expiration of the ten (10) business days, all Parties and, if applicable, any  
18 third party witnesses or attorneys, shall treat the deposition transcript as if it had been designated  
19 “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION.” If the deposition is videotaped, the  
20 video technician shall mark the original and all copies of the videotape to indicate that the contents  
21 of the videotape are subject to this Order, substantially along the lines of “This videotape contains  
22 confidential testimony used in this case. Its contents may not be viewed, displayed, or revealed  
23 except by order of the Court or pursuant to written stipulation of the Parties.” No person shall  
24 attend the designated portions of such depositions unless such person is an authorized recipient of  
25 Designated Material (based on the designation of such Designated Material) under the terms of  
26 this Order.  
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1 **5. UNINTENTIONAL FAILURE TO DESIGNATE**

2 If, through inadvertence, a Producing Party provides any Designated Material pursuant to  
 3 this Litigation without designating and marking the Designated Material as CONFIDENTIAL or  
 4 OUTSIDE ATTORNEYS' EYES ONLY, or fails to designate materials correctly, this does not,  
 5 standing alone, waive the Producing Party's right to secure protection under this Order. The  
 6 Producing Party may subsequently inform the Receiving Party of the confidential nature of the  
 7 disclosed Designated Material, and the Receiving Party shall treat the disclosed Designated  
 8 Material as CONFIDENTIAL INFORMATION or OUTSIDE ATTORNEYS' EYES ONLY  
 9 INFORMATION, as the case may be, upon receipt of written notice from the Producing Party, to  
 10 the extent the Receiving Party has not disclosed this Designated Material. Disclosure of such  
 11 Designated Material to persons not authorized to receive that material prior to receipt of the  
 12 confidentiality designation shall not be deemed a violation of this Order. However, in the event  
 13 the material has been distributed in a manner inconsistent with the categorical designation, the  
 14 Receiving Party will take the steps necessary to conform distribution to the categorical  
 15 designation, *i.e.*, by retrieving all copies of the Designated Material, or notes or extracts thereof, in  
 16 the possession of the persons not authorized under this Order to possess such Designated Material  
 17 and advising the person to whom disclosure was made that the material is confidential and should  
 18 be treated as provided in the Order.

19 **6. CONTESTING THE DESIGNATION**

20 (a) No Party to this Litigation shall be obligated to challenge the propriety of any  
 21 designation by any Producing Party at the time the designation is made, and a failure to do so shall  
 22 not constitute a waiver or in any way preclude a subsequent challenge thereto unless a prompt  
 23 challenge to a Producing Party's confidentiality designation is necessary to avoid foreseeable,  
 24 substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of  
 25 the Litigation.

26 (b) A Party may contest a claim of confidentiality. Such Party objecting to the  
 27 designation of any Discovery Material as Designated Material, such as CONFIDENTIAL  
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1 INFORMATION or OUTSIDE ATTORNEYS' EYES ONLY INFORMATION, must give  
 2 outside counsel for the Producing Party written notice that specifically identifies the documents or  
 3 information that the objecting party contends should be differently designated and the grounds for  
 4 the objection. Outside counsel for the objecting party and outside counsel for the Producing Party  
 5 are to then meet and confer in person, in writing, or by telephone in an effort to resolve the  
 6 contested designation. Failing resolution after service of the written notice of its reasons for the  
 7 objection, the objecting Party may, on a duly noticed motion or other procedure set forth by the  
 8 Court, seek an order changing or removing the designation. In the resolution of such matter, the  
 9 burden of establishing confidentiality shall be on the Party who made the claim of confidentiality,  
 10 *i.e.*, the Producing Party, but information designated as CONFIDENTIAL INFORMATION or  
 11 OUTSIDE ATTORNEYS' EYES ONLY INFORMATION shall be deemed as such until the  
 12 matter is resolved.

#### 13 **7. ACCESS TO DESIGNATED MATERIAL**

14 (a) *Basic Principles.* A Receiving Party is authorized under this Order to use  
 15 Designated Material that is disclosed by another Party or by a non-party in connection with this  
 16 case only for prosecuting, defending or attempting to settle this Litigation. Such Designated  
 17 Material may be disclosed only to those categories of persons and under the conditions described  
 18 in this Order.

19 Designated Material must be stored and maintained by a Receiving Party at a location and  
 20 in a secure manner that ensures that access is limited to the persons authorized under this Order.

21 A Producing Party is free to do whatever it desires with its own Designated Material,  
 22 provided that it complies with the requirements under HIPAA.

23 (b) *Disclosure of "CONFIDENTIAL INFORMATION."* Designated Material marked  
 24 "CONFIDENTIAL" may be disclosed only to:

- 25 (i) any employee of the Producing Party;
- 26 (ii) any former counsel or employee of the Producing Party who was involved
- 27 with the matters to which the "CONFIDENTIAL INFORMATION" relates or refers;
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1 (iii) any person who authored or received the “CONFIDENTIAL  
2 INFORMATION” prior to its production or disclosure in this Litigation;

3 (iv) the Court, its technical advisor, its personnel, and the jury in this Litigation;

4 (v) the Receiving Party’s outside counsel, their staff, and their commercial  
5 copying vendors, data processing vendors, electronic discovery vendors, and/or database services ;

6 (vi) no more than five (5) officers, directors, and employees (including in-house  
7 counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Litigation and  
8 who have signed the undertaking attached as EXHIBIT A agreeing to be bound by the terms of  
9 this Order;

10 (vii) court reporters and videographers engaged for depositions, inspections, and  
11 other proceedings in this Litigation;

12 (viii) subject to Paragraph 8, approved persons or entities engaged by a Party or  
13 counsel as consultants, experts, translators, or interpreters to consult, testify, translate, or interpret  
14 in the case, excluding employees, officers or directors of a named Party or of any parent,  
15 subsidiary, or affiliate of any named Party, and provided that, prior to receiving  
16 “CONFIDENTIAL INFORMATION,” such persons or entities execute an undertaking in the form  
17 attached as EXHIBIT A agreeing to be bound by the terms of this Order;

18 (ix) persons or entities engaged by a Party or counsel for a Party to provide jury  
19 or trial consulting services, provided that, prior to receiving “CONFIDENTIAL  
20 INFORMATION,” such persons or entities execute an undertaking in the form attached as  
21 EXHIBIT A, agreeing to be bound by the terms of this Order;

22 (x) mock jurors or focus group members, provided that, prior to receiving  
23 “CONFIDENTIAL INFORMATION,” such persons execute an undertaking in the form attached  
24 as EXHIBIT B, agreeing to be bound by the terms of this Order; and

25 (xi) persons or entities engaged by a Party or counsel for a Party to prepare  
26 graphic or visual aids, or demonstrative exhibits, provided that, prior to receiving  
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1 “CONFIDENTIAL INFORMATION,” such persons or entities execute an undertaking in the form  
2 attached as EXHIBIT A, agreeing to be bound by the terms of this Order.

3 (c) *Disclosure of “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION.”*

4 Designated Material marked “OUTSIDE ATTORNEYS’ EYES ONLY” may be disclosed only to:

5 (i) the Receiving Party’s Outside Counsel, their staff, and their commercial  
6 copying vendors, data processing vendors, electronic discovery vendors, and/or database services;

7 (ii) any person who (a) appears on the face of the Designated Material marked  
8 “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION” as an author, addressee, or recipient  
9 thereof, or (b) is a witness during a deposition, court hearing, or trial where specific documentary  
10 or testimonial evidence establishes that such person authored or received the Designated Material  
11 marked “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION” prior to its production or  
12 disclosure in this Litigation;

13 (iii) the Court, its technical advisor, its personnel, and the jury in this Litigation;

14 (iv) court reporters and videographers engaged for depositions, inspections, and  
15 other proceedings in this Litigation;

16 (v) subject to Paragraph 8, approved persons or entities engaged by a Party or  
17 counsel as consultants, experts, translators, or interpreters to consult, testify, translate or interpret  
18 in the case, excluding employees, officers or directors of a named Party or of any parent,  
19 subsidiary, or affiliate of any named Party, and provided that, prior to receiving “OUTSIDE  
20 ATTORNEYS’ EYES ONLY INFORMATION,” such persons or entities execute an undertaking  
21 in the form attached as EXHIBIT A agreeing to be bound by the terms of this Order;

22 (vi) persons or entities engaged by a Party or counsel for a Party to provide jury  
23 or trial consulting services, provided that, prior to receiving “OUTSIDE ATTORNEYS’ EYES  
24 ONLY INFORMATION,” such persons or entities execute an undertaking in the form attached as  
25 EXHIBIT A, agreeing to be bound by the terms of this Order; and

26 (vii) persons or entities engaged by a Party or counsel for a Party to prepare  
27 graphic or visual aids, or demonstrative exhibits, provided that, prior to receiving “OUTSIDE  
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1 ATTORNEYS' EYES ONLY INFORMATION," such persons or entities execute an undertaking  
2 in the form attached as EXHIBIT A, agreeing to be bound by the terms of this Order.

3 **8. CONDITIONS ON ACCESS TO DESIGNATED MATERIAL**

4 (a) *Consultants and Experts.* Prior to a Receiving Party giving, showing, disclosing,  
5 making available, or communicating Designated Material to any expert or consultant under  
6 Paragraph 7(c)(v), the Receiving Party shall: serve a written notice on the Producing Party that  
7 includes: (i) the person's name and business address; (ii) the person's present employer and title  
8 (along with a job description); (iii) the person's up-to-date curriculum vitae or resume; (iv) a list  
9 of the cases in which the person has testified at deposition or trial and all companies with which  
10 the person has consulted or by which the person has been employed for the past five (5) years; and  
11 (v) any previous or current relationship (personal or professional) with any of the Parties. If the  
12 up-to-date curriculum vitae or resume of the expert or consultant provides the information  
13 required under this paragraph, then the information need not be separately provided. The  
14 Receiving Party shall include with such notice, a copy of the Acknowledgment of Protective  
15 Order, in the form attached as EXHIBIT A, signed by the proposed expert or consultant agreeing  
16 to be bound by the terms of this Order.

17 (b) *Objections to Proposed Consultants and Experts.* The Producing Party shall be  
18 entitled to object to such disclosure to the expert or consultant within five (5) business days after  
19 receipt of the Acknowledgment of Protective Order executed by such expert or consultant, by  
20 stating specifically in writing the reasons why such expert or consultant should not receive the  
21 Designated Material. Outside counsel for the Producing Party and outside counsel for the  
22 Receiving Party shall meet and confer within three (3) business days after the Producing Party  
23 serves its objection, for the purpose of attempting to resolve the objection. If the objection is not  
24 resolved by the Parties, the Producing Party must file and serve a motion to prevent disclosure  
25 within five calendar (5) business days after such meet and confer. Otherwise, the Producing Party  
26 shall be deemed to have withdrawn its objection. In any motion before the Court, the Producing  
27 Party shall set forth the Parties' meet and confer efforts and shall bear the burden of showing the  
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1 need for confidentiality and the grounds for its objection. No disclosure of Designated Material  
 2 shall be made to the proposed expert or consultant until the Parties resolve the matter, the  
 3 objection is withdrawn, or the Court permits such disclosure. The filing and pendency of  
 4 objections shall not limit, delay, or defer any disclosures of Designated Material to persons as to  
 5 whom no such objection has been made, nor shall it delay or defer any other pending discovery  
 6 unless the level of confidentiality bears directly on the objecting Party's ability to conduct such  
 7 discovery.

8 (c) *Authorization and Acknowledgment.* Each person authorized to receive Designated  
 9 Material under this Order (excluding Judges, Magistrate Judges, judicial law clerks, and clerical  
 10 personnel of the Court before which this Litigation is pending or qualified court reporters, as well  
 11 as third party contractors and their employees involved solely in document management, delivery  
 12 or copying services for this Litigation) to whom Designated Material is to be given, shown,  
 13 disclosed, made available or communicated in any way, shall first execute an Acknowledgment of  
 14 Protective Order in the form attached as EXHIBIT A, agreeing to be bound by the terms of this  
 15 Order, acknowledging that Designated Material is subject to this Order, that the person is  
 16 authorized under Paragraphs 7(b)-(c) to receive Designated Material marked as CONFIDENTIAL  
 17 or OUTSIDE ATTORNEYS' EYES ONLY, that the person has read this Order, that such person  
 18 agrees to comply with, and be bound by, this Order, and that such person is aware that contempt  
 19 sanctions may be entered for violation of this Order. Outside counsel to whom Designated  
 20 Material is produced shall keep in his or her files an original of each such executed  
 21 Acknowledgment of Protective Order until sixty (60) calendar days after the final termination of  
 22 this Litigation. Upon final termination of this Litigation and at the written request of the  
 23 Producing Party, all such executed agreements shall be provided to outside counsel for the  
 24 Producing Party.

## 25 **9. PROCEDURE FOR DISCLOSURES TO OTHER PERSONS**

26 If it becomes necessary for a Receiving Party's outside counsel to seek the assistance of  
 27 any person, other than those persons referred to in Paragraph 7, and to disclose Designated  
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1 Material to such person to properly prepare this Litigation for trial, the following procedures shall  
2 be employed:

3 (a) Outside counsel of the Receiving Party shall notify, in writing, outside counsel for  
4 the Producing Party, identifying therein the specific Designated Material to be disclosed and the  
5 name, address, and position (along with a job description) of the person(s) to whom such  
6 disclosure is to be made;

7 (b) If no objection to such disclosure is made by outside counsel for the Producing  
8 Party within five (5) business days of such notification, outside counsel for the Receiving Party  
9 shall be free to make such disclosure to the designated person(s); provided, however, that outside  
10 counsel for the Receiving Party shall serve upon outside counsel for the Producing Party, prior to  
11 disclosure, an Acknowledgment of Protective Order in the form attached as EXHIBIT A, whereby  
12 such person agrees to comply with and be bound by this Order. The acknowledgment shall be  
13 retained by outside counsel for the Receiving Party, and distributed upon final disposition of this  
14 Litigation as set forth in Paragraph 8 above.

15 (c) If, within five (5) business days, the outside counsel for the Producing Party  
16 objects, in writing, to such disclosure, no disclosure shall be made, except by order of the Court  
17 upon a regularly noticed motion brought by the Receiving Party. Before filing such a motion,  
18 outside counsel for the Receiving Party shall meet and confer with outside counsel for the  
19 Producing Party in a good faith effort to resolve their differences.

20 (d) Any Party moving for such an order requesting disclosure shall explain why the  
21 requested disclosure is appropriate, but the Producing Party shall bear the burden of justifying the  
22 confidentiality designation and explaining the harm that would result from the requested  
23 disclosure.

## 24 **10. PROSECUTION BAR**

25 Absent written consent from the Producing Party, any attorney, patent agent, paralegal,  
26 expert, or consultant of, for, or representing the Receiving Party that gains access to "OUTSIDE  
27 ATTORNEYS' EYES ONLY INFORMATION" shall not be involved in the prosecution of  
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1 patents or patent applications relating to non-invasive pre-natal testing of cell-free DNA in  
 2 maternal serum or plasma samples, including without limitation the patents asserted in this  
 3 Litigation and any patent or application claiming priority to or otherwise related to the patents  
 4 asserted in this Litigation, before any foreign or domestic agency, including the United States  
 5 Patent and Trademark Office (“the Patent Office”). This prosecution bar is personal to the person  
 6 who has gained access to such “OUTSIDE ATTORNEYS’ EYES ONLY INFORMATION” and  
 7 shall not be imputed to any other person or entity. For purposes of this paragraph, “prosecution”  
 8 includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or  
 9 maintenance of patent claims (for example, original prosecution, reissue and reexamination  
 10 proceedings). To avoid any doubt, “prosecution” as used in this paragraph does not include  
 11 representing a party challenging a patent before a domestic or foreign agency (including, but not  
 12 limited to, a reissue protest, ex parte reexamination or inter partes reexamination). This  
 13 Prosecution Bar shall begin when access to “OUTSIDE ATTORNEYS’ EYES ONLY  
 14 INFORMATION” is first received by the affected individual and shall end two (2) years after final  
 15 termination of this Litigation.

16 **11. PROCEDURES FOR FILING PAPERS WITH DESIGNATED MATERIAL**

17 Designated Material may be included with, or referred to in, papers filed with the Court  
 18 where this case is now pending or in any other court only in accordance with the following  
 19 procedures:

20 (a) The Designated Material must be filed under seal in sealed envelopes endorsed  
 21 with the title of this Litigation, an indication of the contents of the envelope, the identity of the  
 22 filing Party and the notation “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER - NOT  
 23 TO BE DISCLOSED EXCEPT BY COURT ORDER OR WRITTEN STIPULATION OF THE  
 24 PARTIES.” A Party that seeks to file under seal any Designated Material must comply with Civil  
 25 Local Rule 79-5.

26 (b) All papers filed with the Court, including but not limited to pleadings and  
 27 memoranda of law, which include all or any portion of information set forth in Designated  
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1 Material must be filed under seal in accordance with the terms and procedures set forth in this  
 2 Order and applicable Court Rules, including the procedures for filing materials set forth above in  
 3 Paragraph 11(a). Counsel for the Party filing papers with Designated Material shall be responsible  
 4 for designating all papers filed with the Court as Designated Material and marked as  
 5 CONFIDENTIAL or OUTSIDE ATTORNEYS' EYES ONLY depending on the contents of the  
 6 papers being filed and for complying with Court Rules governing sealing and redacting of such  
 7 filings. Such papers shall be subject to the terms of this Order.

8 **12. REDACTED FILINGS OF PAPERS WITH DESIGNATED MATERIAL**

9 Subject to the Court's ruling upon an appropriate motion, in accordance with the Court  
 10 Rules, redacted versions of papers with Designated Material filed under seal may be filed with the  
 11 Court in accordance with Court Rules and made publicly available provided that:

12 (a) All Designated Material set forth in the papers is deleted or completely obscured  
 13 and all Designated Material is removed as exhibits; and

14 (b) Redacted versions of the papers are clearly marked "Public Version Confidential  
 15 Material Omitted." Redacted versions of the papers also must clearly identify each place where  
 16 information or exhibits have been deleted.

17 **13. UNINTENTIONAL DISCLOSURE OF PRIVILEGED INFORMATION**

18 Counsel shall exert their best efforts to identify information (including documents or  
 19 material) protected from discovery by the attorney-client privilege, the work-product doctrine, or  
 20 any other applicable privilege or immunity prior to the disclosure of any such documents or  
 21 material. If information subject to a claim of attorney-client privilege, work-product immunity, or  
 22 other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally  
 23 produced, such production shall in no way prejudice or otherwise constitute a waiver or estoppel  
 24 as to any such privilege, doctrine, right or immunity.

25 If a Producing Party unintentionally or inadvertently discloses information that it believes  
 26 is protected privileged or otherwise immune from discovery, the Party shall, within seven (7)  
 27 business days upon discovery of the disclosure, so advise the Receiving Party in writing, request  
 28



1 the information be returned, and attach a privilege log with an entry pertaining to the information  
2 that is privileged or otherwise immune from discovery. If that request is made and the privilege  
3 log provided, no Party to this Litigation shall thereafter assert on this basis that the disclosure  
4 waived any privilege or immunity. If a Receiving Party receives information that the Receiving  
5 Party believes may be subject to a claim of privilege or protection from discovery, the Receiving  
6 Party shall promptly identify the information to the Producing Party.

7       When a Producing Party or Receiving Party identifies such privileged or protected  
8 information, a Receiving Party: (1) shall not use, and shall immediately cease any prior use of,  
9 such information; (2) shall immediately take reasonable steps to retrieve the information from  
10 others to which the Receiving Party disclosed the information; (3) shall immediately, and not later  
11 than three (3) business days after receipt of the Producing Party's request, return to the Producing  
12 Party or destroy the information and destroy all copies thereof; and (4) shall confirm to the  
13 Producing Party the destruction under (3) above of all copies of the information not returned to the  
14 Producing Party. No one shall use the fact or circumstances of production of the information in  
15 this Litigation to argue that any privilege or protection has been waived. The cost, if any, for  
16 excising such documents or materials by the Receiving Party shall be borne by the Producing  
17 Party. Notwithstanding this provision, no Party or its outside counsel shall be required to return or  
18 destroy any information that may exist on any disaster recovery backup system. The Receiving  
19 Party may file a motion to compel the production of the information on the basis that: (a) the  
20 information was never privileged or protected from disclosure; or (b) any applicable privilege or  
21 immunity has been waived by some act other than the production of the information in this  
22 Litigation. Outside counsel for the Producing Party and outside counsel for the Receiving Party  
23 shall meet and confer in accordance with applicable law or Court rules regarding any such motion  
24 to compel.

25       To the extent that any such inadvertently produced material has been used, included,  
26 referenced, or summarized in a pleading, deposition or other proceeding, nothing in this paragraph  
27  
28

1 shall require a Receiving Party to purge, redact, or excise any such information that has been used  
 2 in good faith before a request for the return of the unintentionally produced material.

3 **14. PROCEDURE REGARDING HIPAA-PROTECTED INFORMATION**

4 This Order is intended to comply with the HIPAA requirements of 45 CFR §  
 5 164.512(e)(1)(v). A Producing Party is entitled to redact information that constitutes, embodies,  
 6 or reflects “protected health information” under HIPAA from documents and material produced in  
 7 this Litigation. Alternatively, a Producing Party may produce such documents or material in  
 8 unredacted form by designating the document or material as “OUTSIDE ATTORNEYS’ EYES  
 9 ONLY INFORMATION” in accordance with the provisions of this Order, and the Receiving  
 10 Party shall treat all such “protected health information” accordingly. If a Party uses Designated  
 11 Material containing “protected health information” in an expert report or at deposition, trial, or any  
 12 motion or other presentation in or to the Court, the Party using such Designated Material shall  
 13 redact the “protected health information” from such Designated Material.

14 **15. INFORMATION NOT COVERED BY THIS ORDER**

15 The restrictions set forth in this Order shall not apply to information which is in the  
 16 possession of or otherwise known to the Receiving Party or the public before the date of its  
 17 transmission by the Producing Party to the Receiving Party in this Litigation, or which lawfully  
 18 comes into the possession of or becomes known to the Receiving Party or lawfully comes into the  
 19 possession of or otherwise becomes known to the public after the date of its transmission to the  
 20 Receiving Party, provided that such information does not become publicly known by any act or  
 21 omission of the Receiving Party which would be in violation of this Order.

22 **16. RESPONSIBILITY OF ATTORNEYS**

23 Outside counsel for the Receiving Party shall be responsible for employing reasonable  
 24 measures to control duplication of, access to, and distribution of copies of Designated Materials it  
 25 received. The Receiving Party shall not duplicate any Designated Material except, as  
 26 contemplated by this Order, for use as exhibits at depositions, in connection with court filings or,  
 27 as necessary, by counsel, and experts or consultants approved under Paragraphs 7 and 8, for use as  
 28

1 working copies. All copies, extracts and translations must be appropriately marked and are subject  
 2 to Paragraph 17 of this Order.

3 **17. FINAL DISPOSITION**

4 Upon termination, settlement or final judgment of this Litigation including exhaustion of  
 5 all appeals, the originals and all copies of Designated Material, including without limitation  
 6 documents containing “protected health information” under HIPAA, shall be either destroyed or  
 7 turned over to the Producing Party, or to their respective outside counsel, within sixty (60)  
 8 calendar days. However, outside counsel may retain pleadings, attorney and consultant work  
 9 product, attorney-client communications, communications with opposing counsel, and depositions  
 10 for archival purposes. If Designated Material is destroyed (in lieu of return) pursuant to this  
 11 paragraph, outside counsel for the Receiving Party shall provide to outside counsel for the  
 12 Producing Party a certification identifying when and how the destruction was performed. The  
 13 provisions of this Order insofar as it restricts the disclosure, communication of, and use of  
 14 Designated Material produced hereunder shall continue to be binding after the conclusion of this  
 15 Litigation.

16 **18. REFERENCE TO THIS ORDER AT TRIAL**

17 No reference may be made at the trial in this Litigation in the presence of a jury to the  
 18 existence of this Order or to the effect that certain material is subject to this Order.

19 **19. NO LIMITATION OF OTHER RIGHTS OR OBJECTIONS**

20 By stipulating to the entry of this Order, no Party waives any right it otherwise would have  
 21 to object to disclosing or producing any information or item on any ground not addressed in this  
 22 Order.

23 **20. ADMISSIBILITY**

24 Nothing herein shall be construed to affect in any way the evidentiary admissibility of any  
 25 document, testimony, or other matter at any court proceeding related to this Litigation. The marking  
 26 of Designated Material as CONFIDENTIAL or OUTSIDE ATTORNEYS’ EYES ONLY pursuant  
 27 to this Order shall not, for that reason alone, bar its introduction or use at any court proceeding  
 28

1 related to this Litigation pursuant to such terms and conditions as the Court may deem appropriate,  
 2 consistent with the need for a complete and accurate record of the proceedings; provided, however,  
 3 that every effort shall be made, through the use of procedures agreed upon by the Parties or  
 4 otherwise, to preserve the confidentiality of Designated Material marked as CONFIDENTIAL or  
 5 OUTSIDE ATTORNEYS' EYES ONLY.

6 **21. RELEASE FROM OR MODIFICATION OF THIS ORDER**

7 This Order is entered without prejudice to the right of any Party to apply to the Court at  
 8 any time for additional protection, or to release, rescind, or modify the restrictions of this Order, to  
 9 determine whether a particular person shall be entitled to receive any particular information or to  
 10 seek relief from inadvertent disclosure of privileged or work-product information. This Order  
 11 does not preclude all of the Parties to this Order from entering into any stipulation (in writing or  
 12 on the record) constituting a modification of this Order. On any motion seeking disclosures  
 13 beyond those authorized by this Order, the burden will be on the Receiving Party to justify the  
 14 disclosure.

15 **22. DISCOVERY FROM THIRD PARTIES**

16 If discovery is sought of a person not a Party to this Litigation ("third party") requiring  
 17 disclosure of such third party's Designated Material, the Designated Material disclosed by any  
 18 such third party will be accorded the same protection as the Parties' respective Designated  
 19 Material, and will be subject to the same procedures as those governing disclosure of the parties'  
 20 respective Designated Material pursuant to this Order.

21 **23. MATERIAL CONFIDENTIAL TO THIRD PARTIES**

22 During the course of this Litigation, a Party may be requested to produce to another Party  
 23 information subject to contractual or other obligations of confidentiality owed to a third party by  
 24 the Party receiving the request. The Party subject to such contractual or other obligation of  
 25 confidentiality shall timely contact the third party to determine whether such third party is willing  
 26 to permit disclosure of the information under the terms of this Order. If the third party is willing  
 27 to permit such disclosure, the information shall be produced in accordance with this Order. If the  
 28

1 third party is not willing to permit disclosure of the information under the terms of this Order, the  
2 Requesting Party in the Litigation shall be notified and any information withheld on the basis of  
3 such contractual or other confidentiality obligation shall be identified on a separate index stating  
4 the reason for withholding the document and the third party to whom the obligation of  
5 confidentiality is owed. This Order shall not preclude any Party from moving the Court for an  
6 order compelling production of such information.

7 **24. NON-PARTY REQUEST/SUBPOENA OF DESIGNATED MATERIAL**

8 If a Receiving Party receives a subpoena or other compulsory process from a non-party to  
9 this Order seeking production or other disclosure of a Producing Party's Designated Material, that  
10 Receiving Party shall give written notice to outside counsel for the Producing Party immediately,  
11 and in no event more than five (5) business days after receipt of the subpoena or other compulsory  
12 process, identifying the specific Designated Material sought and enclosing a copy of the subpoena  
13 or other compulsory process.

14 The Receiving Party must also promptly inform in writing the party who caused the  
15 subpoena or order to issue in the other litigation that some or all of the materials covered by the  
16 subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a  
17 copy of this Order promptly to the party in the other action that caused the subpoena or order to  
18 issue.

19 If the Producing Party timely seeks a protective order, the Receiving Party to whom the  
20 subpoena or other compulsory process was issued or served shall not produce the Designated  
21 Material requested prior to receiving a Court order or consent of the Producing Party. In the event  
22 that Designated Material is produced to the non-party, such material shall be treated as Designated  
23 Material pursuant to this Order.

24 **25. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

25 If Designated Material, or any portion thereof, is disclosed by the Receiving Party, through  
26 inadvertence or otherwise, to any person or party not authorized under this Order, then the  
27 Receiving Party shall use its best efforts to retrieve immediately all copies of such Designated  
28

1 Material, and to bind such person to the terms of this Order. In such event, the Receiving Party  
 2 shall also (a) promptly inform such person of all the provisions of this Order; (b) identify such  
 3 person immediately to the Producing Party; and (c) request such person to execute the  
 4 Acknowledgment of Stipulated Protective Order in the form shown in EXHIBIT A.

5 **26. COUNSEL'S RIGHT TO PROVIDE ADVICE**

6 Nothing in this Order shall bar or otherwise restrict any counsel herein from rendering  
 7 advice to the counsel's client with respect to this Litigation, and in the course thereof, relying  
 8 upon an examination of Designated Material, provided, however, that in rendering such advice and  
 9 in otherwise communicating with the Party-client, the counsel shall not disclose any Designated  
 10 Material, nor the source of any Designated Material, to anyone not authorized to receive such  
 11 Designated Material pursuant to the terms of this Order.

12 **27. NO CONTRACT**

13 To the extent that the Parties have agreed on the terms of this Order, such stipulation is for  
 14 the Court's consideration and approval as an Order. The Parties' stipulation shall not be construed  
 15 to create a contract between the Parties or between the Parties and their respective counsel.

16 **28. EFFECTIVE DATE**

17 This Order shall be effective on the date of its execution, provided that all material  
 18 previously produced shall be deemed OUTSIDE ATTORNEYS' EYES ONLY INFORMATION  
 19 unless and until they are re-designated by the Producing Party or by further order of the Court.

20 **29. TERMINATION**

21 The final termination of this Litigation shall not automatically terminate the effectiveness  
 22 of this Order and persons subject to this Order shall be bound by the confidentiality obligations of  
 23 this Order until the Producing Party agrees otherwise in writing or this Court (or any other court of  
 24 competent jurisdiction) orders otherwise.

25 **30. OTHER PROCEEDINGS**

26 By entering this Order and limiting the disclosure of information in this case, the Court  
 27 does not intend to preclude another court from finding that information may be relevant and  
 28

1 subject to disclosure in another case. Any person or Party subject to this Order who becomes  
 2 subject to a motion to disclose another Party's Designated Material pursuant to this Order shall  
 3 promptly notify that Party of the motion so that the Party may have an opportunity to appear and  
 4 be heard on whether that information should be disclosed, as noted above in Paragraph 24.

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6 Dated: July 23, 2012

7 THOMAS WHITE LAW LLP  
 8 W. Paul Schuck

9 By: \_\_\_\_\_

10 Attorneys for Natera, Inc. and DNA Diagnostics  
 11 Center, Inc.

12 Dated: July 23, 2012

13 KAYE SCHOLER LLP  
 14 Michael J. Malacek  
 15 Peter E. Root  
 16 Stephen C. Holmes

16 By: \_\_\_\_\_

17 Attorneys for Sequenom, Inc.

18 Dated: July 23, 2012

19 SATTERLEE STEPHENS BURKE  
 20 & BURKE LLP  
 21 Mario Aieta

22 By: \_\_\_\_\_

23 Attorneys for Isis Innovation Limited

24 **IT IS SO ORDERED.**

25 Dated: 7/24/12

26 

27 United States District Judge  
 28 Susan Illston

**EXHIBIT A**

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| NATERA, INC. and DNA DIAGNOSTICS | ) | Case No. 3:12-cv-0132-SI |
| CENTER, INC.                     | ) |                          |
|                                  | ) |                          |
| Plaintiff/Counterclaim           | ) |                          |
| Defendant,                       | ) |                          |
|                                  | ) |                          |
| v.                               | ) |                          |
|                                  | ) |                          |
| SEQUENOM, INC.                   | ) |                          |
|                                  | ) |                          |
| Defendant/Counterclaim           | ) |                          |
| Plaintiff; and                   | ) |                          |
|                                  | ) |                          |
| ISIS INNOVATION LIMITED          | ) |                          |
| Nominal Counterclaim-            | ) |                          |
| Defendant.                       | ) |                          |

I, \_\_\_\_\_, state that:

I have read and reviewed in its entirety the annexed Stipulated Protective Order (“Protective Order”) that has been signed and entered in this matter.

I hereby agree to be bound by and comply with the terms of the Protective Order, and not to disseminate or disclose any information subject to the Protective Order that I review or about which I am told, to any person, entity, party, or agency for any reason, except in accordance with the terms of the Protective Order.



1 I understand that contempt sanctions may be entered for violation of this Protective Order  
2 and further agree to submit to the jurisdiction of this Court for the purposes of enforcement of the  
3 terms of this Protective Order.

4 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

6  
7 \_\_\_\_\_  
(Signature)

8 \_\_\_\_\_  
(Typed or Printed Name)

**EXHIBIT B**

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| NATERA, INC. and DNA DIAGNOSTICS | ) | Case No. 3:12-cv-0132-SI |
| CENTER, INC.                     | ) |                          |
|                                  | ) |                          |
| Plaintiff/Counterclaim           | ) |                          |
| Defendant,                       | ) |                          |
|                                  | ) |                          |
| v.                               | ) |                          |
|                                  | ) |                          |
| SEQUENOM, INC.                   | ) |                          |
|                                  | ) |                          |
| Defendant/Counterclaim           | ) |                          |
| Plaintiff; and                   | ) |                          |
|                                  | ) |                          |
| ISIS INNOVATION LIMITED          | ) |                          |
| Nominal Counterclaim-            | ) |                          |
| Defendant.                       | ) |                          |

1. This agreement is made between \_\_\_\_\_  
[INSERT NAME OF COUNSEL or CONSULTANT] and  
\_\_\_\_\_ (NAME OF PARTICIPANT),  
residing at \_\_\_\_\_ (ADDRESS OF  
PARTICIPANT).

2. I understand that, in connection with the research project in which I am  
participating today, I may receive information that is confidential, and that I may not share or  
disclose that information with anyone (including members of my family) outside of this research  
group.

1           3.       I agree not to disclose any information I learn here today to anyone outside of this  
2 research group, or to use such information in any way outside of my participation in this research  
3 project today.

4           4.       I agree that, at the end of the research project today, I will not keep or take with me  
5 any documents or other materials shown to me, or any notes or other records I may make about  
6 those documents or other materials shown to me today.

7  
8                               Signed:

9 \_\_\_\_\_

10                              Date: \_\_\_\_\_